IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 4TH JANUARY 2007 / 14TH POUSHA, 1928

WP(C).No. 31984 of 2005(G)

AGAINST THE ORDER DATED 29/10/2005 IN MP.926/05 IN MC.198/2004 of FAMILY COURT,ERNAKULAM

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PETITIONER:

LISSY @ MARY GEORGE,
W/O. PRIYADARSHAN, AGED 38 YEARS,
VANDHANA TOWERS, NUNKAMPAKKAM, CHENNAI,
TAMIL NADU.

BY ADV. SRI.JAIJI ITTEN
SRI.PRAMOD JAIJI

RESPONDENTS:

VARKEY @ PAPPACHAN,
AGED 65 YEARS, NELLIKATTIL VEEDU,
CHEMMINKUTHU, MALIPARA P.O., PAZHANGARA,
KOTHAMANGALAM, ERNAKULAM DISTRICT.

BY ADV. SRI.K.P.ARAVINDAKSHAN
GOVERNMENT PLEADER GIKKU JACOB.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 31984 of 2005(G)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 – TURE COPY OF M.C.198/04 FILED BY THE RESPONDENT BEFORE THE FAMILY COURT, ERNAKULAM.

EXT.P2 – TRUE COPY OF M.P.926/05 IN M.C.NO.198/04 FILED BY PETITIONER BEFORE THE FAMILY COURT, ERNAKULAM.

EXT.P3 – TRUE COPY OF THE RELEVANT PAGE OF THE PETITIONER'S SSLC BOOK.

EXT.P4 - TRUE COPY OF THE RELEVANT PAGES PF the [ETOTOPMER'S PASSPORT (2 PAGES).

EXT.P5 – CERTIFIED COPY OF THE ORDER DATED 29/10/05 IN M.P.926/05 IN M.C.198/04 PASSED BY THE HON'BLE FAMILY COURT, ERNAKULAM.

//TRUE COPY//

R. BASANT, J.

W.P.(C) NO. 31984 OF 2005-G

Dated this the 4th day of January, 2007

JUDGMENT

Against the petitioner, the respondent has made a claim under Sec.125 of the Cr.P.C. before the learned Judge of the Family Court, Ernakulam. The respondent claims to be the father of the petitioner. The petitioner denies the same. The petitioner, it is the common case of both sides, is a reputed cine artist and the wife of a reputed film producer. The petitioner contends that she is being dragged unnecessarily into a controversy and that she has nothing to do with the respondent herein. The paternity is thus disputed. The petitioner contends that it would be unfair and improper to compel her personal presence in a matter like this before the Family Court. The learned counsel for the petitioner submits that the very purpose is only to attract unnecessary publicity and embarrass the petitioner by compelling her to appear personally before the Family Court. On receipt of the summons, the petitioner engaged a counsel who filed an

application before the learned Judge of the Family Court for permission to appear through counsel along with an affidavit of the petitioner. By the impugned order, a copy of which is produced as Ext.P5, the learned Judge of the Family Court dismissed the application with the following order:

> "I.A. dismissed as it is not presented directly by petitioner and as the leave sought is too premature considering the stage of the proceedings."

2. The learned counsel for the petitioner submits that the dismissal of the petition was done in a very casual manner without applying the mind of the Family Court to the nature of the dispute and the contentions raised. The learned counsel for the petitioner submits that prima facie there is absolutely no material which can indicate any nexus between the petitioner and the respondent. The learned counsel for the petitioner has placed reliance on the relevant documents like passport, S.S.L.C. Book etc., which show that the petitioner is the daughter of one George, whereas the respondent is a person by name Varkey @ Pappachan. The learned Judge of the Family Court did not alertly and sensitively apply his mind to the nature of the dispute

and went wrong in mechanically insisting on the personal presence of the petitioner before the Family Court. This is unfair and unjust. At a later stage, if the Judge feels that the personal presence of the petitioner is necessary, the petitioner undertakes to appear. But till such time that the learned Judge, at least, entertains the prima facie satisfaction that there is a bona fide claim, the petitioner may not be compelled to appear in person. This, in short, is the plea.

3. The learned counsel for the respondent submits that he is known by various names - Varkey, Pappachan and George, being some of those names. I shall refrain from making any observations which would affect the merits of the case. Suffice it to say that I am satisfied, in the facts and circumstances of this case, that this is an eminently fit case where the learned Judge must have permitted the petitioner to appear through counsel, at least, at the initial stage till the learned Judge of the Family Court entertains the satisfaction that there is a serious issue to be considered and the petition is not filed with the sole purpose of vexation, harassment and undeserved publicity and with the intention of tarnishing the name of the petitioner.

4. In the result:

(a) This writ petition is allowed.

(b) The impugned order is set aside.

(c) M.P.No.926/05 shall stand allowed.

(d) The petitioner shall be permitted to appear through counsel until further orders. I make it clear that if the learned Judge of the Family Court, on materials placed before him, is able to entertain the satisfaction at least prima facie that there is a serious question to be gone into, the learned Judge shall be at liberty to insist for reasons to be recorded on the personal appearance of the petitioner at later stages.

(R. BASANT, JUDGE)

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